

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBIN BOYETTE

Claimant

VS.

HALLMARK CARDS, INC.

Respondent

Self-Insured

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Docket No. 268,590

ORDER

Respondent appealed Administrative Law Judge Bryce D. Benedict's November 30, 2001, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for medical treatment, temporary total disability, and temporary partial disability benefits. On appeal, respondent contends claimant failed to prove she suffered an accidental injury or an occupational disease that arose out of and in the course of her employment with respondent. Furthermore, respondent argues that the ALJ exceeded his jurisdiction when he ordered respondent to pay temporary total and temporary partial disability compensation for the same weeks claimant received full wages from respondent.

Claimant, on the other hand, requests the Board to affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

Claimant started working for the respondent on January 24, 1994, as a feeder packer in a department responsible for the manufacturing and packing of envelopes. On April 9, 2001, claimant woke up with left leg pain, nausea, and stomach pains.¹ As a

¹ At the November 28, 2001, preliminary hearing, claimant testified those symptoms occurred on a Monday and that the date of the occurrence was April 7, 2001. April 7, 2001, however, was a Saturday. Claimant's Exhibit No. 4 admitted into evidence at the preliminary hearing and signed by claimant and Dr. Reser, indicates that claimant was disabled as of April 9, 2001.

result of those symptoms, claimant on her own, sought medical treatment from Juliana Reser, M.D., at the Haskell Indian Health Center located in Lawrence, Kansas. Dr. Reser's medical treatment records were offered and were admitted into evidence at the preliminary hearing.

Dr. Reser's first medical record is dated April 26, 2001, and is a follow up appointment. As a result of Dr. Reser's examination, she found liver tenderness and mild tenderness in claimant's calf of her left leg. Her impression was hepatitis of uncertain etiology and phlebitis of the left leg. The next time Dr. Reser saw claimant was on May 3, 2001. At that time, claimant had undergone blood tests which indicated elevated liver enzymes. Her physical examination revealed slight left calf tenderness and mild tenderness of the liver. Dr. Reser noted claimant worked around chemicals and took claimant off work.

Because of the elevated liver enzymes, Dr. Reser referred claimant to Curtis A. Baum, M.D., in Topeka, Kansas, for a gastroenterology consultation. Dr. Baum had claimant undergo additional blood tests on June 5, 2001, which showed that claimant's liver enzymes were normal.

Dr. Reser returned claimant to work for 4 hours per day on June 25, 2001. During the July 27, 2001, follow up visit, Dr. Reser found claimant again with nausea and pain in her abdominal area since July 24, 2001. On physical examination, Dr. Reser also found tenderness in claimant's liver and the liver was enlarged one centimeter beyond the coastal margin. Claimant was taken off work from July 24, 2001, to September 1, 2001.

Claimant returned for a follow up visit on August 28, 2001. At that time, claimant had no pain, her liver was back to normal size and the examination of the liver did not indicate any tenderness.

Dr. Reser returned claimant to work on October 15, 2001, but with the restriction not to work in areas exposed to chemicals contained in the ink, glue and paint. Claimant returned to respondent with those restrictions and, as of the November 28, 2001, preliminary hearing, claimant remained off work because respondent had not accommodated her restrictions.

In a November 21, 2001, letter to claimant's attorney, Dr. Reser stated claimant had none of the usual causes of liver disease such as hepatitis, heavy alcohol drinking or drug use. But significant in claimant's history was the fact that she was regularly exposed to chemical substances at work. Dr. Reser went on to opine that she thought there was a cause and effect relationship between claimant's chemical exposure at work and the elevated liver enzyme levels.

At the preliminary hearing, claimant admitted her phlebitis condition in her left leg was not part of the claim and was not related to her employment with respondent. In

regard to claimant's liver condition, respondent contends that claimant failed to prove through her testimony or through Dr. Reser's medical opinions that claimant's chemical exposure while working for the respondent had any relationship to her symptoms of nausea and abdominal pain. Furthermore, respondent argues that the preliminary hearing record contains no medical evidence that proves claimant's chemical exposure at work was the cause of her elevated liver enzymes, enlargement of her liver, or findings of liver tenderness during examination.

The Board disagrees with the respondent. The Board finds, for preliminary hearing purposes, that Dr. Reser's opinion is persuasive that claimant's chemical exposure at work caused claimant's elevated liver enzymes, enlargement of the liver, and the liver tenderness found on physical examination. Those symptoms resulted in a liver condition that caused claimant to suffer nausea and abdominal pain. Moreover, the Board finds significant that claimant's liver enzyme levels tested normal after claimant was taken off work and then after claimant returned to work for a period of approximately four weeks claimant again became nauseated, had abdominal pain and Dr. Reser found claimant's liver enlarged and tender upon examination.

Accordingly, the Board concludes that the ALJ's preliminary hearing Order should be affirmed. The Board finds that claimant has proven, for preliminary hearing purposes, that she suffers from a liver condition as a result of chemical exposure while employed by the respondent.

Respondent also argues that the ALJ exceeded his jurisdiction when he ordered respondent to pay claimant temporary total disability and temporary partial disability compensation. The Board finds, as it has on numerous occasions, it does not have jurisdiction, at this juncture of the proceedings, to review a preliminary hearing finding of the ALJ in regard to temporary total or temporary partial disability compensation. The preliminary hearing statute gives the ALJ authority to grant or deny a request for either medical and temporary total or temporary partial disability compensation pending a full hearing on the claim.²

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bryce D. Benedict's November 30, 2001, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

² See K.S.A. 44-534a(a)(2).

BOARD MEMBER

c: Patrick R. Nichols, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director